

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.22054 of 2013

V.Kathirvel

... Petitioner

Vs.

1. The Senior Regional Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Mettupalayam Road, Koundampalayam Post,
Coimbatore.

2. The District Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Sooriyampalayam, Vasavi College Post,
Erode District.

3. The District Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Tiruppur District.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the proceedings of the second respondent bearing Na.Ka.No.1626/2006/R5, dated 15.02.2007 and quash the same as illegal and consequently direct the respondents herein to reinstate the petitioner as Shop Salesman.

For Petitioner : Mr.K.Sasindran
For Respondents : Mr.K.Satishkumar

O R D E R

Heard Mr.K.Sasindran, learned counsel appearing for the petitioner and Mr.K.Satishkumar, learned counsel appearing for the respondents.

2.The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records of the proceedings of the second respondent bearing Na.Ka.No.1626/2006/R5, dated 15.02.2007 and quash the same as illegal and consequently direct the respondents herein to reinstate the petitioner as Shop Salesman."

3. The case of the petitioner is as follows:

The petitioner was working as a sales man in Shop no.3885, which is one of the TASMAL outlet functioning under the control of the respondents. A surprise inspection was carried out on 17.08.2006 and found liquor bottles were adulterated. Therefore he was charge sheeted on 21.08.2006, and he was placed under suspension. An explanation was submitted by the petitioner on 27.08.2006, denying all the allegations. However, it appears that an enquiry was conducted and no witness was examined and no documents were marked in the enquiry, merely some statements were obtained from the petitioner.

4. However, it appears that no further order was passed, the petitioner approached the authorities concerned repeatedly as to what happened after the enquiry was ordered. However, no decision or action was forthcoming from the respondents, in the said circumstances, the petitioner made an application under Right to Information Act in 2010. In response to the application, a communication was sent to the petitioner on 02.07.2010. He was informed that his service came to be terminated on 15.02.2007 itself.

5. According to the petitioner, the order has not been served and he came to know about the same only when the authorities responded to the Right to Information Application. In the said circumstances, he could not file an appeal to the appellate authority and therefore, constrained to approach this Court, challenging the order of termination said to have been passed against him on 15.02.2007.

6. The learned counsel appearing for the petitioner would submit that the authorities have not followed the due process of law before issuing the order of termination and the issue is squarely covered by various decisions of this Court, holding that in the absence of proper procedure being followed in conducting the enquiry, the dismissal order cannot be held to be legally valid. The learned counsel would draw the attention of this Court to the recent decision passed on 14.07.2017, in W.P.No.32809 of 2013, wherein, this Court has allowed the similar writ petitions after adverting to various orders passed

by this Court. Particularly, the learned counsel would draw this Court's attention to the Division Bench order in writ appeal No.1801 of 2012, wherein, the Division Bench has extracted the observations of another Division Bench in its order in paragraphs 6 & 7. For the sake of clarity, the same are extracted hereunder:

"6. Expressing concern over lack of proper mechanism to initiate disciplinary proceedings against TASMAC employees and expressing the need to have a proper disciplinary procedure, in para 8 of the judgment in W.A.No.27 of 2009 dated 27.01.2009, the Division Bench has held as under:

"8. Be that as it may, we have come across a number of cases where allegations of adulteration and other serious misconduct levelled against the TASMAC salesmen, whose services came to be terminated based on certain letters said to have been given by the concerned TASMAC salesmen admitting their guilt on the spot. Since numerous cases of this nature are being reported, it is high time that the appellant corporation instead of resorting to such shortcut method of terminating the services, even after noting such serious allegations of misconduct by such TASMAC employees, they can well be advised to take proper disciplinary action before resorting to termination of the services of such employees in order to have effective disciplinary control over those employees. Such a procedure can be followed in the matter of taking disciplinary action against these employees, especially, for imposing the extreme punishment of dismissal. It is high time that the appellant corporation who is stated to have employed several thousand salesmen to run the TASMAC shops set up a separate machinery for following the proper disciplinary procedure so that any action taken by TASMAC can be justified when the same is challenged before the Court of law. It will also have an effective control over such employees in the matter of their day-to-day administrative control over their employees. Irrespective of serious allegations of adulteration, sale of empty bottles and such other misconduct, the salesmen got away with such punishment for

not following the proper disciplinary procedure while imposing the punishment on them....."

7. In respect of the similarly placed person in W.A.No.872 of 2009 dated 02.07.2009, the Division Bench, referring to the judgment of the Honourable Supreme Court in State of Haryana Vs. Satyendra Singh Rathore (2005 (7) SCC 518) took the view that there cannot be a summary dismissal of an employee, which causes stigma and has civil consequences. In para 5 and 6, the Division Bench has held as under:

"5. In our opinion, such an argument cannot be accepted. The Apex Court in the judgments reported in 2005 (7) SCC 518 and 1999 (3) SCC 60, referred supra, has held that when an order involves civil consequences and consequently amounts to stigma, the same cannot be passed without there being a charge memo, enquiry and finding as to those charges. Though in the judgment in Lakshmanakumar's case, cited supra, this Court on considering a summary dismissal, observed that the TASMAG was entitled to proceed against the employee in terms of the contract, that does not mean that such a summary dismissal can be ordered in the event such order causes stigma.

6. We have perused the nature of charges. The charges are very serious, particularly when they allege that the employee has adulterated the liquor and he has misappropriated the money, caused loss to the TASMAG and to the Government. These are all major misconducts, of course, warranting a serious punishment and in that case, a punishment of dismissal could be inflicted only on proper enquiry even in the case of a contract employee, especially when the employee had denied the charges by giving explanation."

7. In that case also, the facts are almost identical and the Division Bench of this Court categorically held that the authorities have to conduct enquiry so as to comply with the principles of natural Justice before passing the order of dismissal of the employee. Accordingly, the Hon'ble Division

Bench directed to reinstate the appellant therein in service, without any backwages.

8. This Court has given its anxious consideration of the legal submission and the factual aspects after perusing the materials and the pleadings.

9. The issue raised in the present writ petition is squarely covered by the decision of the learned Division Bench of this Court in W.A.No.1801 of 2012 dated 29.10.2013 as extracted above.

10. Even otherwise, the facts and circumstances of the case warrant interference of this Court, since the order of dismissal, which resulted in adverse civil consequences on the petitioner, cannot be passed without following the due process of law. Hence, the order of dismissal of the petitioner from service cannot be allowed to stand any further.

11. In the light of the above narrative and the legal position as per the order passed by the learned Division Bench, this Court has no hesitation to allow this writ petition. In the circumstances, the impugned order dated 15.02.2007 is set aside and the respondents are directed to reinstate the petitioner in service with all benefits except backwages for the period of non-employment. The said direction shall be complied within a period of four weeks from the date of receipt of a copy of this order.

12. With the above terms, the writ petition is allowed. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

gsk

To

1. The Senior Regional Manager,
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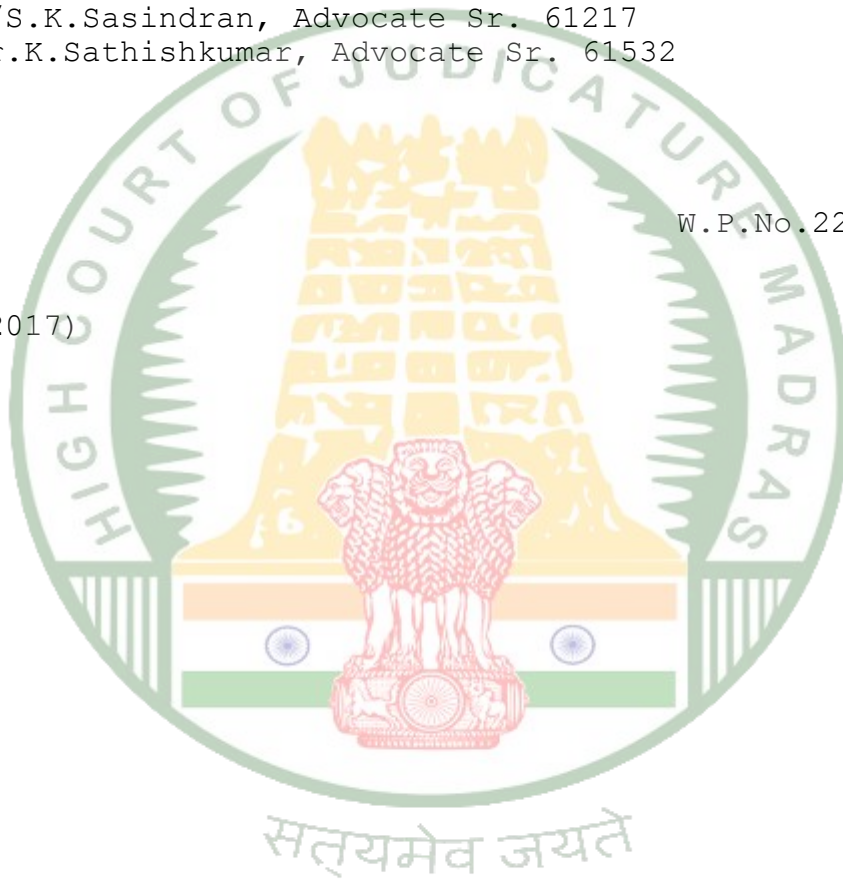
3. The District Manager,
Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Tiruppur District.

+1cc to M/S.K.Sasindran, Advocate Sr. 61217

+1cc to Mr.K.Sathishkumar, Advocate Sr. 61532

W.P.No.22054 of 2013

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